
By: **Delegates Wood, Harrison, Kirk, Minnick, Moe, and Vaughn**
Introduced and read first time: February 12, 2004
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Financial Institutions - Consumer Credit - Mortgage Originators**

3 FOR the purpose of prohibiting an individual from acting as a mortgage originator
4 unless the individual is a licensee or is exempt from licensing under this Act;
5 providing that a license issued under this Act authorizes a licensee to act as a
6 mortgage originator only when acting within the scope of employment with a
7 mortgage lender; prohibiting a licensee from maintaining more than one license
8 or being employed by more than one mortgage lender; requiring the
9 Commissioner of Financial Regulation in the Department of Labor, Licensing,
10 and Regulation to include certain items on each license; prohibiting an
11 individual from acting as a mortgage originator under a name or for an
12 employer that is different from the name and employer that appear on the
13 license unless the licensee notifies the Commissioner in advance of the change;
14 authorizing the issuance of a license to an individual employed by a mortgage
15 lender if the principal office of the mortgage lender is located outside the State
16 if certain conditions are met; establishing qualifications for obtaining a license
17 and for denial of an application for a license; establishing procedures for
18 application for a license; requiring the Commissioner to investigate to determine
19 if an applicant meets the requirements of this Act; requiring the Commissioner
20 to issue a license to an applicant who meets the requirements of this Act;
21 establishing procedures for the approval, provisional approval, provisional
22 denial, and denial of an application; requiring a licensee to notify the
23 Commissioner in writing of any change in the licensee's employer prior to
24 commencing employment with a new employer; providing for the expiration of a
25 license; establishing procedures for renewal of a license; prohibiting the
26 Commissioner from refunding any part of a license fee under certain
27 circumstances; authorizing the Secretary of Labor, Licensing, and Regulation to
28 determine that licenses issued under this Act shall expire on a staggered basis;
29 establishing a Mortgage Originator Fund; providing that the Fund shall consist
30 of certain items; requiring the Commissioner to pay certain fines and penalties
31 into the General Fund of the State; establishing the purpose of the Fund;
32 requiring the annual State budget to include certain items; authorizing the
33 making of certain expenditures from the Fund under certain circumstances;
34 requiring certain amounts in the Fund to be carried forward under certain
35 circumstances; providing that the State Treasurer is the custodian of the Fund;

1 requiring the State Treasurer to deposit certain payments into the Fund;
 2 providing that the Fund is a continuing, nonlapsing fund and is not subject to
 3 certain provisions of law; prohibiting, unless otherwise provided by law, a part of
 4 the Fund from reverting or being credited to the General Fund or a special fund
 5 of the State; requiring the Governor to appropriate certain funds in a certain
 6 manner; requiring the Commissioner to adopt certain regulations relating to
 7 continuing education requirements; authorizing the Commissioner to examine
 8 each licensee in accordance with a certain schedule established by the
 9 Commissioner and at any other time that the Commissioner reasonably
 10 considers necessary; authorizing certain aggrieved persons to file a written
 11 complaint with the Commissioner who shall investigate the complaint;
 12 authorizing the Commissioner to make any other investigation of a person
 13 under certain circumstances; requiring a licensee to pay to the Commissioner a
 14 certain fee; establishing the Commissioner's examination and enforcement
 15 powers; establishing certain notice and hearing requirements; establishing
 16 certain penalties for a violation of this Act; providing that the employment of a
 17 mortgage originator licensed under this Act by a mortgage lender does not
 18 relieve the mortgage lender of certain liabilities; authorizing the Commissioner
 19 to adopt regulations to carry out the provision of this Act; defining certain terms;
 20 and generally relating to mortgage originators.

21 BY adding to
 22 Article - Financial Institutions
 23 Section 11-517(f); and 11-601 through 11-618, inclusive, to be under the new
 24 subtitle "Subtitle 6. Mortgage Originators"
 25 Annotated Code of Maryland
 26 (2003 Replacement Volume)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 28 MARYLAND, That the Laws of Maryland read as follows:

29 **Article - Financial Institutions**

30 11-517.

31 (F) THE EMPLOYMENT OF A MORTGAGE ORIGINATOR LICENSED UNDER
 32 SUBTITLE 6 OF THIS TITLE BY A MORTGAGE LENDER DOES NOT RELIEVE THE
 33 MORTGAGE LENDER OF A RESPONSIBILITY UNDER THIS SUBTITLE, A RULE OR
 34 REGULATION ADOPTED UNDER THIS SUBTITLE, OR A LAW GOVERNING MORTGAGE
 35 LENDING IN THE STATE.

36 **SUBTITLE 6. MORTGAGE ORIGINATORS.**

37 11-601.

38 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 39 INDICATED.

1 (B) "BORROWER" HAS THE MEANING STATED IN § 11-501 OF THIS TITLE.

2 (C) "FUND" MEANS THE MORTGAGE ORIGINATOR FUND ESTABLISHED UNDER
3 § 11-610 OF THIS SUBTITLE.

4 (D) "LICENSE" MEANS A LICENSE ISSUED BY THE COMMISSIONER UNDER
5 THIS SUBTITLE.

6 (E) "LICENSEE" MEANS AN INDIVIDUAL WHO IS LICENSED BY THE
7 COMMISSIONER UNDER THIS SUBTITLE.

8 (F) "LOAN APPLICATION" HAS THE MEANING STATED IN § 11-501 OF THIS
9 TITLE.

10 (G) "MORTGAGE LENDER" MEANS A PERSON THAT IS LICENSED AS A
11 MORTGAGE LENDER UNDER SUBTITLE 5 OF THIS TITLE.

12 (H) "MORTGAGE LENDING BUSINESS" HAS THE MEANING STATED IN § 11-501
13 OF THIS TITLE.

14 (I) "MORTGAGE LOAN" HAS THE MEANING STATED IN § 11-501 OF THIS TITLE.

15 (J) (1) "MORTGAGE ORIGINATOR" MEANS AN INDIVIDUAL WHO:

16 (I) IS AN EMPLOYEE OF A MORTGAGE LENDER;

17 (II) DIRECTLY CONTACTS PROSPECTIVE BORROWERS FOR THE
18 PURPOSE OF NEGOTIATING WITH OR ADVISING THE PROSPECTIVE BORROWERS
19 REGARDING MORTGAGE LOAN TERMS AND AVAILABILITY;

20 (III) WORKS IN OR OUT OF A NET BRANCH OFFICE OF THE
21 MORTGAGE LENDER;

22 (IV) RECEIVES FROM THE MORTGAGE LENDER COMPENSATION
23 THAT IS CALCULATED:

24 1. AS A PERCENTAGE OF THE PRINCIPAL AMOUNT OF
25 MORTGAGE LOANS ORIGINATED BY THE INDIVIDUAL; OR

26 2. AS A PERCENTAGE OF THE INTEREST, FEES, AND
27 CHARGES RECEIVED BY THE MORTGAGE LENDER THAT RESULT FROM MORTGAGE
28 LOAN TRANSACTIONS ORIGINATED BY THE INDIVIDUAL; AND

29 (V) IS AUTHORIZED TO ACCEPT A LOAN APPLICATION ON BEHALF
30 OF THE MORTGAGE LENDER.

31 (2) "MORTGAGE ORIGINATOR" DOES NOT INCLUDE AN INDIVIDUAL WHO:

32 (I) OWNS A 25 PERCENT OR MORE INTEREST IN THE MORTGAGE
33 LENDER; OR

1 (II) IS LICENSED UNDER SUBTITLE 5 OF THIS TITLE.

2 (K) (1) "NET BRANCH OFFICE" MEANS A BRANCH OFFICE OF A MORTGAGE
3 LENDER THAT IS SEPARATELY LICENSED UNDER SUBTITLE 5 OF THIS TITLE IF:

4 (I) AS A CONDITION OF ESTABLISHING THE NET BRANCH, THE
5 MORTGAGE LENDER REQUIRES THE MORTGAGE ORIGINATOR WHO WORKS IN OR OUT
6 OF THE BRANCH OFFICE, OR A PERSON CONTROLLED BY THE MORTGAGE
7 ORIGINATOR, TO PAY AN APPLICATION, LICENSING, FRANCHISE, START-UP, OR
8 OTHER FEE TO THE MORTGAGE LENDER OR DIRECTLY TO THE COMMISSIONER;

9 (II) THE EXPENSES AND OVERHEAD OF THE NET BRANCH ARE PAID
10 IN WHOLE OR IN PART BY:

11 1. A MORTGAGE ORIGINATOR WHO WORKS IN OR OUT OF
12 THE BRANCH OFFICE; OR

13 2. A PERSON CONTROLLED BY A MORTGAGE ORIGINATOR
14 WHO WORKS IN OR OUT OF THE BRANCH OFFICE; OR

15 (III) THE MORTGAGE LENDER IS NOT:

16 1. AN OBLIGOR ON A LEASE OF THE PREMISES OF THE
17 BRANCH LOCATION; OR

18 2. AN OWNER OF THE PREMISES OF THE BRANCH LOCATION.

19 (2) "NET BRANCH OFFICE" DOES NOT INCLUDE THE MORTGAGE
20 LENDER'S PRINCIPAL OFFICE.

21 11-602.

22 THE COMMISSIONER MAY ADOPT REGULATIONS TO CARRY OUT THE
23 PROVISIONS OF THIS SUBTITLE.

24 11-603.

25 AN INDIVIDUAL MAY NOT ACT AS A MORTGAGE ORIGINATOR UNLESS THE
26 INDIVIDUAL IS:

27 (1) A LICENSEE; OR

28 (2) EXEMPT FROM LICENSING UNDER THIS SUBTITLE.

29 11-604.

30 (A) A LICENSE ISSUED UNDER THIS SUBTITLE AUTHORIZES THE LICENSEE TO
31 ACT AS A MORTGAGE ORIGINATOR ONLY WHEN ACTING WITHIN THE SCOPE OF
32 EMPLOYMENT WITH A MORTGAGE LENDER.

33 (B) A LICENSEE MAY NOT:

1 (1) MAINTAIN MORE THAN ONE LICENSE UNDER THIS SUBTITLE; OR

2 (2) BE EMPLOYED BY MORE THAN ONE MORTGAGE LENDER.

3 (C) (1) THE COMMISSIONER SHALL INCLUDE ON EACH LICENSE:

4 (I) THE NAME OF THE LICENSEE; AND

5 (II) THE NAME OF THE LICENSEE'S EMPLOYER.

6 (2) UNLESS THE LICENSEE NOTIFIES THE COMMISSIONER IN ADVANCE
7 OF A CHANGE IN THE LICENSEE'S NAME OR THE LICENSEE'S EMPLOYER, AN
8 INDIVIDUAL MAY NOT ACT AS A MORTGAGE ORIGINATOR UNDER A NAME OR FOR AN
9 EMPLOYER THAT IS DIFFERENT FROM THE NAME AND EMPLOYER THAT APPEAR ON
10 THE LICENSE.

11 (D) A LICENSE MAY BE ISSUED UNDER THIS SUBTITLE TO AN INDIVIDUAL
12 EMPLOYED BY A MORTGAGE LENDER IF THE PRINCIPAL OFFICE OF THE MORTGAGE
13 LENDER IS LOCATED OUTSIDE THE STATE, IF THE MORTGAGE LENDER MAINTAINS:

14 (1) A RESIDENT AGENT WITHIN THE STATE; AND

15 (2) AN OFFICE WITHIN THE STATE.

16 11-605.

17 (A) TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL SATISFY THE
18 COMMISSIONER THAT:

19 (1) THE APPLICANT EITHER:

20 (I) HAS AT LEAST 3 YEARS OF EXPERIENCE IN THE MORTGAGE
21 LENDING BUSINESS AND HAS COMPLETED THE REQUIRED COURSES FOR
22 CONTINUING EDUCATION ESTABLISHED BY THE COMMISSIONER UNDER § 11-612 OF
23 THIS SUBTITLE; OR

24 (II) HAS COMPLETED 40 HOURS OF CLASSROOM EDUCATION
25 CONDUCTED IN THE STATE AS PRESCRIBED BY THE COMMISSIONER BY REGULATION
26 AND ACHIEVED A PASSING GRADE ON A WRITTEN EXAMINATION ISSUED OR
27 APPROVED BY THE COMMISSIONER FOR NEW APPLICANTS; AND

28 (2) THE APPLICANT IS OF GOOD MORAL CHARACTER AND HAS GENERAL
29 FITNESS TO WARRANT THE BELIEF THAT THE APPLICANT WILL ACT AS A MORTGAGE
30 ORIGINATOR IN A LAWFUL, HONEST, FAIR, AND EFFICIENT MANNER.

31 (B) THE COMMISSIONER MAY DENY AN APPLICATION FOR A LICENSE FILED
32 BY AN INDIVIDUAL WHO HAS COMMITTED AN ACT THAT WOULD SERVE AS A
33 SUFFICIENT GROUND FOR SUSPENSION OR REVOCATION OF A LICENSE UNDER THIS
34 SUBTITLE OR A MORTGAGE LENDER LICENSE UNDER SUBTITLE 5 OF THIS TITLE.

1 (C) THE COMMISSIONER MAY NOT DENY AN APPLICATION BASED SOLELY ON
2 THE APPLICANT'S FINANCIAL CONDITION, CREDIT HISTORY, OR NET WORTH, OR THE
3 INVOLVEMENT OF THE APPLICANT IN A BANKRUPTCY PROCEEDING UNDER TITLE 11
4 OF THE UNITED STATES CODE.

5 11-606.

6 (A) (1) TO APPLY FOR A LICENSE, AN APPLICANT SHALL COMPLETE, SIGN,
7 AND SUBMIT TO THE COMMISSIONER AN APPLICATION MADE UNDER OATH ON THE
8 FORM THAT THE COMMISSIONER REQUIRES.

9 (2) THE APPLICANT SHALL COMPLY WITH ALL CONDITIONS AND
10 PROVISIONS OF THE APPLICATION FOR A LICENSE.

11 (3) THE APPLICATION SHALL INCLUDE:

12 (I) THE APPLICANT'S NAME, SOCIAL SECURITY NUMBER, BUSINESS
13 ADDRESS AND TELEPHONE NUMBER, AND RESIDENCE ADDRESS;

14 (II) THE BUSINESS NAME, BUSINESS ADDRESS, AND TELEPHONE
15 NUMBER OF THE APPLICANT'S EMPLOYER OR PROSPECTIVE EMPLOYER;

16 (III) THE APPLICANT'S RESUME OR WORK EXPERIENCE, INCLUDING
17 THE NAMES AND ADDRESSES OF PRIOR EMPLOYERS AND A DESCRIPTION OF EACH
18 JOB OR POSITION HELD BY THE APPLICANT WITH PRIOR EMPLOYERS;

19 (IV) A WRITTEN STATEMENT FROM THE APPLICANT'S PRESENT OR
20 PROSPECTIVE EMPLOYER THAT THE APPLICANT HAS BEEN APPROVED FOR
21 EMPLOYMENT;

22 (V) A WRITTEN STATEMENT STATING WHETHER THE APPLICANT
23 HAS BEEN CONVICTED OF, PLEADED GUILTY TO, OR PLEADED NOLO CONTENDERE
24 TO A FELONY OR MISDEMEANOR, EXCEPT MINOR TRAFFIC OFFENSES, WITHIN THE
25 PRECEDING 10 YEARS, A DESCRIPTION OF THE NATURE AND DISPOSITION OF ANY
26 DISCLOSED CRIMINAL PROCEEDING, AND THE NAME OF THE COURT WHERE THE
27 PROCEEDING TOOK PLACE; AND

28 (VI) A WRITTEN STATEMENT STATING WHETHER THE
29 COMMISSIONER, OR ANY OTHER REGULATORY AUTHORITY IN THE STATE OR ANY
30 OTHER JURISDICTION THAT GOVERNS THE MORTGAGE LENDING BUSINESS OR
31 MORTGAGE LOAN ORIGINATION, WITH RESPECT TO THE APPLICANT OR AN ENTITY IN
32 WHICH THE APPLICANT HAS OR HAD ANY OWNERSHIP INTEREST, HAS:

- 33 1. DENIED AN APPLICATION FOR A LICENSE;
34 2. REVOKED OR SUSPENDED A LICENSE; OR
35 3. IMPOSED ANY OTHER FORMAL ORDER OR REGULATOR
36 SANCTION.

1 (B) WITH EACH APPLICATION, THE APPLICANT SHALL PAY TO THE
2 COMMISSIONER:

3 (1) A NONREFUNDABLE APPLICATION FEE OF \$100; AND

4 (2) A LICENSE FEE OF \$250.

5 (C) (1) IN CONNECTION WITH AN APPLICATION FOR A LICENSE UNDER THIS
6 SECTION, AN APPLICANT SHALL PROVIDE FINGERPRINTS FOR USE BY THE FEDERAL
7 BUREAU OF INVESTIGATION AND THE CRIMINAL JUSTICE INFORMATION SYSTEM
8 CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND
9 CORRECTIONAL SERVICES TO CONDUCT CRIMINAL HISTORY RECORDS CHECKS.

10 (2) AN APPLICANT REQUIRED TO PROVIDE FINGERPRINTS UNDER THIS
11 SUBSECTION SHALL PAY ANY PROCESSING OR OTHER FEES REQUIRED BY THE
12 FEDERAL BUREAU OF INVESTIGATION OR THE CRIMINAL JUSTICE INFORMATION
13 SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND
14 CORRECTIONAL SERVICES.

15 11-607.

16 (A) WHEN AN APPLICANT FOR A LICENSE FILES THE APPLICATION AND PAYS
17 THE FEES REQUIRED BY § 11-606 OF THIS SUBTITLE, THE COMMISSIONER SHALL
18 INVESTIGATE TO DETERMINE IF THE APPLICANT MEETS THE REQUIREMENTS OF §
19 11-605 OF THIS SUBTITLE.

20 (B) THE COMMISSIONER SHALL ISSUE A LICENSE TO AN APPLICANT WHO
21 MEETS THE REQUIREMENTS OF § 11-605 OF THIS SUBTITLE.

22 (C) IF THE COMMISSIONER HAS NOT NOTIFIED THE APPLICANT IN WRITING
23 THAT THE APPLICANT'S APPLICATION IS INCOMPLETE OR HAS BEEN DENIED OR
24 PROVISIONALLY DENIED WITHIN 30 DAYS AFTER THE COMMISSIONER RECEIVES THE
25 COMPLETED APPLICATION, THE APPLICATION SHALL BE CONSIDERED
26 PROVISIONALLY APPROVED.

27 (D) IF THE COMMISSIONER NOTIFIES AN APPLICANT THAT THE APPLICATION
28 IS INCOMPLETE:

29 (1) THE COMMISSIONER'S NOTICE SHALL ITEMIZE THE STEPS WHICH
30 THE APPLICANT MUST UNDERTAKE TO COMPLETE THE APPLICATION; AND

31 (2) THE APPLICATION SHALL NOT BE CONSIDERED PROVISIONALLY
32 APPROVED UNTIL 30 DAYS AFTER THE APPLICANT SUPPLIES OR COMPLETES ALL
33 ITEMS AND STEPS IDENTIFIED IN THE COMMISSIONER'S NOTICE.

34 (E) THE COMMISSIONER MAY PROVISIONALLY DENY AN APPLICATION IF THE
35 INFORMATION SUBMITTED IN THE APPLICATION OR INFORMATION THAT THE
36 COMMISSIONER HAS OBTAINED ABOUT THE APPLICANT FROM ANOTHER SOURCE
37 WOULD SERVE AS SUFFICIENT GROUNDS TO DENY THE APPLICATION.

1 (F) WHETHER OR NOT AN APPLICATION HAS BEEN PROVISIONALLY
2 APPROVED, THE COMMISSIONER MAY DENY AN APPLICATION:

3 (1) IF THE APPLICANT FAILS TO QUALIFY FOR A LICENSE UNDER THIS
4 SUBTITLE; OR

5 (2) FOR ANY REASON THAT A LICENSE MAY BE REVOKED OR
6 SUSPENDED UNDER THIS SUBTITLE OR A MORTGAGE LENDER LICENSE MAY BE
7 SUSPENDED OR REVOKED UNDER § 11-517 OF THIS TITLE.

8 (G) THE COMMISSIONER SHALL APPROVE OR DENY AN APPLICATION WITHIN
9 60 DAYS AFTER THE COMMISSIONER RECEIVES A COMPLETED APPLICATION.

10 11-608.

11 (A) IF THE COMMISSIONER DENIES AN APPLICATION, THE COMMISSIONER
12 SHALL:

13 (1) WITHIN 10 DAYS NOTIFY THE APPLICANT, IN WRITING, OF THE
14 DENIAL;

15 (2) REFUND THE LICENSE FEE; AND

16 (3) KEEP THE INVESTIGATION FEE.

17 (B) WITHIN 30 DAYS AFTER THE COMMISSIONER DENIES AN APPLICATION,
18 THE COMMISSIONER SHALL:

19 (1) ISSUE A WRITTEN DECISION CONTAINING THE SPECIFIC FACTUAL
20 FINDINGS AND CONCLUSIONS OF LAW UPON WHICH THE DENIAL WAS BASED;

21 (2) SEND A COPY OF THE WRITTEN DECISION BY CERTIFIED MAIL TO
22 THE APPLICANT; AND

23 (3) ADVISE THE APPLICANT BY CERTIFIED MAIL OF THE APPLICANT'S
24 RIGHT TO A HEARING TO BE HELD IN ACCORDANCE WITH THE ADMINISTRATIVE
25 PROCEDURE ACT.

26 (C) AN APPLICANT WHO SEEKS A HEARING ON AN APPLICATION DENIAL
27 SHALL FILE WITH THE COMMISSIONER'S OFFICE A WRITTEN REQUEST FOR A
28 HEARING WITHIN 45 DAYS AFTER RECEIPT OF THE COMMISSIONER'S WRITTEN
29 DECISION AND NOTICE OF THE APPLICANT'S RIGHT TO A HEARING.

30 11-609.

31 (A) A LICENSEE SHALL NOTIFY THE COMMISSIONER IN WRITING OF ANY
32 CHANGE IN THE LICENSEE'S EMPLOYER PRIOR TO COMMENCING EMPLOYMENT
33 WITH A NEW EMPLOYER.

1 (B) A LICENSE ISSUED ON OR AFTER OCTOBER 1, 2004 EXPIRES ON DECEMBER
2 31 IN EACH EVEN-NUMBERED YEAR AFTER DECEMBER 31, 2004 UNLESS THE LICENSE
3 IS RENEWED FOR A 2-YEAR TERM AS PROVIDED IN THIS SECTION.

4 (C) ON OR BEFORE DECEMBER 1 OF THE YEAR OF EXPIRATION, A LICENSE
5 MAY BE RENEWED FOR AN ADDITIONAL 2-YEAR TERM IF THE LICENSEE:

6 (1) OTHERWISE IS ENTITLED TO BE LICENSED;

7 (2) PAYS TO THE COMMISSIONER A RENEWAL FEE OF \$300; AND

8 (3) SUBMITS TO THE COMMISSIONER:

9 (I) A RENEWAL APPLICATION ON THE FORM THAT THE
10 COMMISSIONER REQUIRES; AND

11 (II) SATISFACTORY EVIDENCE OF COMPLIANCE WITH ANY
12 CONTINUING EDUCATION REQUIREMENTS SET BY REGULATIONS ADOPTED BY THE
13 COMMISSIONER.

14 (D) IF A LICENSE IS ISSUED FOR LESS THAN 2 FULL YEARS AND IS
15 SURRENDERED VOLUNTARILY, OR IS SUSPENDED OR REVOKED, THE COMMISSIONER
16 MAY NOT REFUND ANY PART OF THE LICENSE FEE REGARDLESS OF THE TIME
17 REMAINING IN THE LICENSE TERM.

18 (E) THE SECRETARY OF LABOR, LICENSING, AND REGULATION MAY
19 DETERMINE THAT LICENSES ISSUED UNDER THIS SUBTITLE SHALL EXPIRE ON A
20 STAGGERED BASIS.

21 11-610.

22 (A) THERE IS A MORTGAGE ORIGINATOR FUND THAT CONSISTS OF:

23 (1) REVENUE RECEIVED FOR THE LICENSING OF INDIVIDUALS WHO
24 ENGAGE IN THE BUSINESS OF MORTGAGE ORIGATION UNDER THIS SUBTITLE;

25 (2) INCOME FROM THE INVESTMENTS THAT THE STATE TREASURER
26 MAKES FOR THE FUND; AND

27 (3) ANY OTHER FEE, EXAMINATION ASSESSMENT, OR REVENUE
28 RECEIVED BY THE COMMISSIONER UNDER THIS SUBTITLE.

29 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE
30 COMMISSIONER SHALL PAY ALL FINES AND PENALTIES COLLECTED BY THE
31 COMMISSIONER UNDER THIS SUBTITLE INTO THE GENERAL FUND OF THE STATE.

32 (C) THE PURPOSE OF THE FUND IS TO PAY THE COSTS AND EXPENSES
33 INCURRED BY THE COMMISSIONER THAT ARE RELATED TO THE REGULATION OF THE
34 BUSINESS OF MORTGAGE ORIGATION UNDER THIS SUBTITLE, INCLUDING:

35 (1) EXPENDITURES AUTHORIZED UNDER THIS SUBTITLE; AND

1 (2) ANY OTHER EXPENSE AUTHORIZED IN THE STATE BUDGET.

2 (D) (1) THE ANNUAL STATE BUDGET SHALL INCLUDE THE COSTS AND
3 EXPENSES OF THE COMMISSIONER RELATING TO THE REGULATION OF THE
4 BUSINESS OF MORTGAGE ORIGINATION UNDER THIS SUBTITLE.

5 (2) ANY EXPENDITURES FROM THE FUND TO COVER COSTS AND
6 EXPENSES OF THE COMMISSIONER MAY BE MADE ONLY:

7 (I) WITH AN APPROPRIATION FROM THE FUND APPROVED BY THE
8 GENERAL ASSEMBLY IN THE ANNUAL STATE BUDGET; OR

9 (II) BY THE BUDGET AMENDMENT PROCEDURE PROVIDED FOR IN §
10 7-209 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

11 (3) IF, IN ANY FISCAL YEAR, THE AMOUNT OF THE REVENUE COLLECTED
12 BY THE COMMISSIONER AND DEPOSITED INTO THE FUND EXCEEDS THE ACTUAL
13 APPROPRIATION FOR THE COMMISSIONER TO REGULATE THE BUSINESS OF
14 MORTGAGE ORIGINATION UNDER THIS SUBTITLE, THE EXCESS AMOUNT SHALL BE
15 CARRIED FORWARD WITHIN THE FUND.

16 (E) (1) THE STATE TREASURER IS THE CUSTODIAN OF THE FUND.

17 (2) THE STATE TREASURER SHALL DEPOSIT PAYMENTS RECEIVED FROM
18 THE COMMISSIONER INTO THE FUND.

19 (F) (1) THE FUND IS A CONTINUING, NONLAPSING FUND AND IS NOT
20 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, AND MAY
21 NOT BE DEEMED A PART OF THE GENERAL FUND OF THE STATE.

22 (2) UNLESS OTHERWISE PROVIDED BY LAW, NO PART OF THE FUND MAY
23 REVERT OR BE CREDITED TO:

24 (I) THE GENERAL FUND OF THE STATE; OR

25 (II) A SPECIAL FUND OF THE STATE.

26 11-611.

27 BEGINNING IN FISCAL YEAR 2005, THE GOVERNOR SHALL APPROPRIATE IN THE
28 ANNUAL STATE BUDGET FUNDS TO THE DIVISION OF FINANCIAL REGULATION FOR
29 THE PURPOSE OF CREATING NECESSARY POSITIONS TO IMPLEMENT THE
30 PROVISIONS OF THIS SUBTITLE.

31 11-612.

32 (A) THE COMMISSIONER SHALL ADOPT REGULATIONS THAT SET CONTINUING
33 EDUCATION REQUIREMENTS AS A CONDITION TO THE RENEWAL OF LICENSES
34 UNDER THIS SUBTITLE.

1 (B) ANY CONTINUING EDUCATION REQUIREMENTS ESTABLISHED BY THE
2 COMMISSIONER UNDER THIS SECTION SHALL APPLY TO THE FIRST RENEWAL OF A
3 LICENSE.

4 11-613.

5 (A) (1) THE COMMISSIONER SHALL EXAMINE EACH LICENSEE:

6 (I) IN ACCORDANCE WITH A SCHEDULE ESTABLISHED BY THE
7 COMMISSIONER; AND

8 (II) AT ANY OTHER TIME THAT THE COMMISSIONER REASONABLY
9 CONSIDERS NECESSARY.

10 (2) THE SCHEDULE ESTABLISHED BY THE COMMISSIONER UNDER
11 PARAGRAPH (1)(I) OF THIS SUBSECTION SHALL:

12 (I) TAKE INTO ACCOUNT:

13 1. THE LENGTH OF TIME THE LICENSEE HAS BEEN
14 ENGAGED IN BUSINESS AS A MORTGAGE ORIGINATOR;

15 2. ANY PRIOR VIOLATIONS BY THE LICENSEE OF THE
16 MORTGAGE LENDING LAW OR REGULATIONS;

17 3. THE NATURE AND NUMBER OF ANY COMPLAINTS MADE
18 AGAINST THE LICENSEE; AND

19 4. THE RESULT OF FINDINGS FROM ANY PRIOR
20 EXAMINATION OF THE LICENSEE; AND

21 (II) PROVIDE THAT:

22 1. NEW LICENSEES SHALL BE EXAMINED WITHIN 18
23 MONTHS OF THE DATE THE LICENSE IS ISSUED; AND

24 2. EACH LICENSEE SHALL BE EXAMINED AT LEAST ONCE
25 DURING ANY 36-MONTH PERIOD.

26 (B) (1) ANY PERSON AGGRIEVED BY THE CONDUCT OF A LICENSEE UNDER
27 THIS SUBTITLE IN CONNECTION WITH A MORTGAGE LOAN MAY FILE A WRITTEN
28 COMPLAINT WITH THE COMMISSIONER WHO SHALL INVESTIGATE THE COMPLAINT.

29 (2) THE COMMISSIONER MAY MAKE ANY OTHER INVESTIGATION OF A
30 LICENSEE IF THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THAT THE
31 LICENSEE HAS VIOLATED ANY PROVISION OF THIS SUBTITLE, OF ANY REGULATION
32 ADOPTED UNDER THIS SUBTITLE, OR OF ANY OTHER LAW REGULATING MORTGAGE
33 LOAN LENDING IN THE STATE.

34 (C) A LICENSEE SHALL PAY TO THE COMMISSIONER A FEE OF NOT MORE
35 THAN \$250 PER DAY FOR EACH OF THE COMMISSIONER'S EMPLOYEES ENGAGED IN:

1 (1) AN EXAMINATION REQUIRED UNDER SUBSECTION (A)(1) OF THIS
2 SECTION; AND

3 (2) ANY OTHER EXAMINATION OR INVESTIGATION CONDUCTED UNDER
4 THIS SECTION THAT RESULTS IN THE DISCOVERY OF A VIOLATION OF THIS SUBTITLE
5 BY THE LICENSEE.

6 (D) IN CONNECTION WITH AN EXAMINATION OR INVESTIGATION MADE
7 UNDER THIS SECTION, THE COMMISSIONER MAY:

8 (1) EXAMINE THE BOOKS AND RECORDS OF ANY LICENSEE OR OF ANY
9 OTHER PERSON THAT THE COMMISSIONER BELIEVES HAS VIOLATED ANY PROVISION
10 OF THIS SUBTITLE, OR ANY RULE OR REGULATION ADOPTED UNDER THIS SUBTITLE,
11 OR OF ANY OTHER LAW REGULATING MORTGAGE LOAN LENDING IN THE STATE;

12 (2) SUBPOENA DOCUMENTS OR OTHER EVIDENCE; AND

13 (3) SUMMON AND EXAMINE UNDER OATH ANY PERSON WHOSE
14 TESTIMONY THE COMMISSIONER REQUIRES.

15 (E) (1) IF ANY PERSON FAILS TO COMPLY WITH A SUBPOENA OR SUMMONS
16 OF THE COMMISSIONER UNDER THIS SUBTITLE OR TO TESTIFY CONCERNING ANY
17 MATTER ABOUT WHICH THE PERSON MAY BE INTERROGATED UNDER THIS
18 SUBTITLE, THE COMMISSIONER MAY FILE A PETITION FOR ENFORCEMENT WITH THE
19 CIRCUIT COURT FOR ANY COUNTY.

20 (2) ON PETITION BY THE COMMISSIONER, THE COURT MAY ORDER THE
21 PERSON TO ATTEND AND TESTIFY OR PRODUCE EVIDENCE.

22 11-614.

23 (A) IF THE COMMISSIONER FINDS THAT THE CONDUCT OF ANY OTHER
24 BUSINESS CONCEALS A VIOLATION OR EVASION OF THIS SUBTITLE OR ANY RULE OR
25 REGULATION ADOPTED UNDER THIS SUBTITLE, OR ANY LAW REGULATING
26 MORTGAGE LOAN LENDING IN THE STATE, THE COMMISSIONER MAY ISSUE A
27 WRITTEN ORDER TO A LICENSEE TO STOP DOING BUSINESS:

28 (1) AT ANY PLACE IN WHICH THE OTHER BUSINESS IS CONDUCTED OR
29 SOLICITED; OR

30 (2) IN ASSOCIATION OR CONJUNCTION WITH THE OTHER BUSINESS.

31 (B) A LICENSEE WHO VIOLATES AN ORDER OF THE COMMISSIONER ISSUED
32 UNDER THIS SECTION SHALL BE SUBJECT TO THE PENALTIES PROVIDED BY § 11-615
33 OF THIS SUBTITLE.

34 (C) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT FOR
35 ANY COUNTY SEEKING ENFORCEMENT OF AN ORDER UNDER THIS SECTION.

1 11-615.

2 (A) SUBJECT TO THE HEARING PROVISIONS OF § 11-616 OF THIS SUBTITLE,
3 THE COMMISSIONER MAY SUSPEND OR REVOKE THE LICENSE OF ANY LICENSEE IF
4 THE LICENSEE:

5 (1) MAKES ANY MATERIAL MISSTATEMENT IN AN APPLICATION FOR A
6 LICENSE;

7 (2) IS CONVICTED UNDER THE LAWS OF THE UNITED STATES OR OF ANY
8 STATE OF A FELONY OR A MISDEMEANOR THAT IS DIRECTLY RELATED TO THE
9 FITNESS AND QUALIFICATION OF THE INDIVIDUAL TO ACT AS A MORTGAGE
10 ORIGINATOR;

11 (3) IN CONNECTION WITH ANY MORTGAGE LOAN OR LOAN APPLICATION
12 TRANSACTION:

13 (I) COMMITS ANY FRAUD;

14 (II) ENGAGES IN ANY ILLEGAL OR DISHONEST ACTIVITIES; OR

15 (III) MISREPRESENTS OR FAILS TO DISCLOSE ANY MATERIAL FACTS
16 TO A PERSON ENTITLED TO THAT INFORMATION;

17 (4) VIOLATES ANY PROVISION OF THIS SUBTITLE OR ANY REGULATION
18 ADOPTED UNDER IT OR ANY OTHER LAW REGULATING MORTGAGE LENDING OR
19 ORIGATION IN THE STATE; OR

20 (5) OTHERWISE DEMONSTRATES UNWORTHINESS, BAD FAITH,
21 DISHONESTY, OR ANY OTHER QUALITY THAT INDICATES THAT THE BUSINESS OF THE
22 LICENSEE HAS NOT BEEN OR WILL NOT BE CONDUCTED HONESTLY.

23 (B) IN DETERMINING WHETHER A LICENSE SHALL BE SUSPENDED OR
24 REVOKED FOR A REASON DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION, THE
25 COMMISSIONER SHALL CONSIDER:

26 (1) THE NATURE OF THE CRIME;

27 (2) THE RELATIONSHIP OF THE CRIME TO THE ACTIVITIES AUTHORIZED
28 BY THE LICENSE;

29 (3) WITH RESPECT TO A FELONY, THE RELEVANCE OF THE CONVICTION
30 TO THE FITNESS AND QUALIFICATION OF THE LICENSEE TO ENGAGE IN THE
31 MORTGAGE LENDING BUSINESS;

32 (4) THE LENGTH OF TIME SINCE THE CONVICTION; AND

33 (5) THE BEHAVIOR AND ACTIVITIES OF THE LICENSEE SINCE THE
34 CONVICTION.

1 (C) (1) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS
2 SUBTITLE, REGULATIONS ADOPTED UNDER § 11-602 OF THIS SUBTITLE, AND THE
3 APPLICABLE PROVISIONS OF TITLE 12 OF THE COMMERCIAL LAW ARTICLE BY:

4 (I) ISSUING AN ORDER:

5 1. TO CEASE AND DESIST FROM THE VIOLATION AND ANY
6 FURTHER SIMILAR VIOLATIONS; AND

7 2. REQUIRING THE VIOLATOR TO TAKE AFFIRMATIVE
8 ACTION TO CORRECT THE VIOLATION, INCLUDING THE RESTITUTION OF MONEY OR
9 PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION; AND

10 (II) IMPOSING A CIVIL PENALTY NOT EXCEEDING \$1,000 FOR EACH
11 VIOLATION.

12 (2) IF A VIOLATOR FAILS TO COMPLY WITH AN ORDER ISSUED UNDER
13 PARAGRAPH (1)(I) OF THIS SUBSECTION, THE COMMISSIONER MAY IMPOSE A CIVIL
14 PENALTY NOT EXCEEDING \$1,000 FOR EACH VIOLATION FROM WHICH THE VIOLATOR
15 FAILED TO CEASE AND DESIST OR FOR WHICH THE VIOLATOR FAILED TO TAKE
16 AFFIRMATIVE ACTION TO CORRECT.

17 (D) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT FOR
18 ANY COUNTY SEEKING ENFORCEMENT OF AN ORDER ISSUED UNDER THIS SECTION.

19 (E) IN DETERMINING THE AMOUNT OF FINANCIAL PENALTY TO BE IMPOSED
20 UNDER SUBSECTION (C) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER:

21 (1) THE SERIOUSNESS OF THE VIOLATION;

22 (2) THE GOOD FAITH OF THE VIOLATOR;

23 (3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;

24 (4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC AND
25 MORTGAGE INDUSTRY;

26 (5) THE ASSETS OF THE VIOLATOR; AND

27 (6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF THE
28 FINANCIAL PENALTY.

29 11-616.

30 (A) BEFORE THE COMMISSIONER TAKES ANY ACTION UNDER § 11-614 OR §
31 11-615 OF THIS SUBTITLE, THE COMMISSIONER SHALL GIVE THE LICENSEE AN
32 OPPORTUNITY FOR A HEARING.

33 (B) NOTICE OF THE HEARING SHALL BE GIVEN AND THE HEARING SHALL BE
34 HELD IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

1 (C) THE HEARING NOTICE TO THE LICENSEE SHALL BE SENT BY CERTIFIED
2 MAIL, RETURN RECEIPT REQUESTED, TO THE PRINCIPAL PLACE OF BUSINESS OF THE
3 LICENSEE AT LEAST 30 DAYS BEFORE THE HEARING.

4 11-617.

5 ANY PERSON WHO WILLFULLY VIOLATES THE PROVISIONS OF THIS SUBTITLE
6 IS GUILTY OF A FELONY AND, ON CONVICTION, IS SUBJECT TO A FINE NOT
7 EXCEEDING \$25,000 OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

8 11-618.

9 THE EMPLOYMENT OF A MORTGAGE ORIGINATOR LICENSED UNDER THIS
10 SUBTITLE BY A MORTGAGE LENDER DOES NOT RELIEVE THE MORTGAGE LENDER OF
11 A RESPONSIBILITY UNDER THIS SUBTITLE, A RULE OR REGULATION ADOPTED
12 UNDER THIS SUBTITLE, OR A LAW GOVERNING MORTGAGE LENDING IN THE STATE.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2004.